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THURSDAY, JANUARY 28, 1999 9:30 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING, EVERYBODY. I HOPE THAT THE JUROR WHO AT THE END OF THE DAY YESTERDAY SAID "WE'LL SEE" REMEMBERS WHAT SHE SAID.

JUROR NO. 2: SORRY ABOUT THAT. SORRY ABOUT THAT. IT GAVE EVERYBODY A GOOD LAUGH BEFORE WE LEFT, YOUR HONOR.

THE COURT: OKAY. GOOD MORNING, EVERYBODY. AND, MR. OHLEMEYER, YOU MAY CALL YOUR NEXT WITNESS.

MR. OHLEMEYER: MR. BARRON.

THE COURT: MR. BARRON.

MR. BARRON: YOUR HONOR, THE DEFENDANT WOULD LIKE TO CALL DR. WILLIAM RYMER.

THE COURT: OKAY.

TESTIMONY OF

WILLIAM RYMER, M.D.

A WITNESS CALLED ON BEHALF OF THE DEFENDANT, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME.

THE WITNESS: WILLIAM RYMER.

THE CLERK: PLEASE SPELL YOUR NAME.

THE WITNESS: R-Y-M-E-R.

THE CLERK: IS WILLIAM W-I-L-L-I-A-M?

THE WITNESS: YES.

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

THE COURT: ALL RIGHT. MR. BARRON.

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DIRECT EXAMINATION

BY MR. BARRON: Q. GOOD MORNING. DOCTOR, LET'S GET RIGHT TO THIS.

WHAT TYPE OF WORK DO YOU DO?

A. I'M A MEDICAL ONCOLOGIST AND HEMATOLOGIST.

Q. HAVE YOU EVER TESTIFIED IN COURT BEFORE?

A. NO, I HAVEN'T.

Q. THIS IS YOUR FIRST TIME?

A. CORRECT.

Q. OKAY. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT YOUR EDUCATION AND BACKGROUND BEFORE WE GET TO OPINIONS.

BUT HAVE YOU FORMED SOME OPINIONS IN THIS CASE?

A. YES, I HAVE.

Q. HAVE YOU FORMED SOME OPINIONS ABOUT WHETHER MS. HENLEY AND HER CANCER WAS CAUSED BY SMOKING OR CIGARETTES?

A. YES, I HAVE OPINIONS.

Q. YOU WENT TO MEDICAL SCHOOL?

A. CORRECT.

Q. AND YOU FINISHED WHEN?

A. I GRADUATED IN 1972.

Q. WHERE WAS THAT?

A. NEW YORK MEDICAL COLLEGE.

Q. AND THEN YOU HAD AN INTERNSHIP AND RESIDENCY, AS I UNDERSTAND IT, AT THE SAME SCHOOL?

A. IN INTERNAL MEDICINE AT THE UNIVERSITY OF WISCONSIN, MADISON.

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Q. AND A RESIDENCY THERE ALSO?

A. CORRECT.

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Q. WHEN DID YOU FINISH THE RESIDENCY PROGRAM AT THE UNIVERSITY?
A. 1975.
Q. DID YOU GO ON TO HAVE WHAT THE JURY'S HEARD ABOUT IN THE WAY OF FELLOWSHIPS?
A. YES, I DID.
Q. WHAT WAS YOUR FELLOWSHIP IN?
A. MY FELLOWSHIP WAS IN HEMATOLOGY AND MEDICAL ONCOLOGY, AND THAT WAS AT THE UNIVERSITY OF MIAMI FROM '75 TO '78.
Q. FOR TWO YEARS?
A. THREE YEARS.
Q. THREE YEARS, I MEAN?
A. YES.
Q. DID YOU GO ON TO BECOME AT SOME POINT BOARD-CERTIFIED IN ANY OF THESE SPECIALTIES?
A. YES, I DID. I BECAME BOARD-CERTIFIED IN INTERNAL MEDICINE AND HEMATOLOGY AND IN MEDICAL ONCOLOGY.
Q. THREE SEPARATE BOARD CERTIFICATIONS?
A. YES.
Q. WAS THERE A TIME WHEN YOU ENTERED PRIVATE PRACTICE?
A. YES.
Q. AND IN WHAT SPECIALTY OR SPECIALTIES?
A. IN HEMATOLOGY AND MEDICAL ONCOLOGY.
Q. AND WHERE WAS THAT WHEN YOU STARTED PRIVATE

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PRACTICE?
A. I'VE BEEN IN PRACTICE IN FORT LAUDERDALE SINCE 1978.
Q. NOW, THE JURY'S ALREADY HEARD, I THINK, ABOUT HEMATOLOGY AND ONCOLOGY, SO WE DON'T NEED IT IN DETAIL.
WILL YOU JUST BRIEFLY SUMMARIZE THAT, SO WE CAN GET ACQUAINTED WITH WHAT YOUR PRACTICE IS.
A. CERTAINLY. MYSELF AND MY THREE ASSOCIATES, WE HAVE A PRACTICE THAT'S CONFINED TO JUST TREATMENT -- DIAGNOSIS AND TREATMENT OF MALIGNANT DISEASES OR CANCER, AND DIAGNOSIS AND TREATMENT OF BLOOD DISEASES.
Q. NOW, ARE YOU ON THE STAFF OF ANY HOSPITALS?
A. FOUR HOSPITALS.
Q. I'M NOT SURE WE HAD A DISCUSSION ABOUT HOW A DOCTOR GETS ON THE STAFF OR WHAT KIND OF A SHOWING YOU HAVE TO MAKE.
COULD YOU EXPLAIN HOW IT WORKS.
FIRST OF ALL, ARE ALL DOCTORS ALLOWED TO BE ON THE STAFF OF HOSPITALS? IN OTHER WORDS, ARE ALL LICENSED DOCTORS ALLOWED TO BE PART OF THE HOSPITAL STAFF?
A. IT DEPENDS. IN CERTAIN AREAS OF THE COUNTRY WHERE YOU HAVE TOO MANY DOCTORS, THEY MAY IMPOSE CERTAIN RESTRICTIONS ON DOCTORS COMING ON STAFF.
BUT IN GENERAL, WHEN THERE IS AN OPEN STAFF POLICY, ANY PHYSICIAN THAT SHOWS HE'S BEEN TRAINED -- AND THEY HAVE TO CHECK THEIR BACKGROUND VERY CLOSELY -- ANY PHYSICIAN THAT SHOWS HE'S BEEN TRAINED AND LICENSED IN A PARTICULAR STATE AND GOES THROUGH AN APPROPRIATE

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CREDENTIALING PROCESS CAN GET ON THE STAFF OF A HOSPITAL,.
IT'S ACTUALLY KIND OF A TEDIOUS PROCESS, BUT MOST PHYSICIANS CAN OVERCOME THE PROCESS.
Q. AND THEN DO THE HOSPITALS TEND TO TRY TO WATCH TO SOME EXTENT, THROUGH THE MEDICAL STAFF, THE PRACTICE OF THE

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INDIVIDUAL DOCTORS TO MAKE SURE THAT THEY ARE PRACTICING UP TO THE STANDARDS THAT THE HOSPITAL WANTS OR THE STATE WANTS?

A. WELL, IN GENERAL, THEY DON'T REALLY CHECK YOUR DAY-TO-DAY ACTIVITIES. BUT IF THERE ARE TOO MANY MARKS AGAINST YOU, IF YOU DO THINGS THAT AREN'T APPROPRIATE, THEY CERTAINLY KEEP TRACK OF THOSE THINGS.

Q. I NOTICE FROM YOUR CURRICULUM VITAE OR YOUR RESUME, AS I CALL IT, THAT YOU'RE BEEN CHIEF OF STAFF OR -- EXCUSE ME -- CHIEF OF ONCOLOGY AT THE VETERANS ADMINISTRATION OUTPATIENT CLINIC.

COULD YOU TELL US ABOUT THAT.

A. CERTAINLY. AROUND 19 -- THE LATE '70S, THE VETERANS HOSPITAL MIAMI OPENED UP A SATELLITE CLINIC IN FORT LAUDERDALE, AND WE BECAME THE ONCOLOGIST. I GUESS, SINCE I WAS THE SENIOR PERSON, I BECAME THE CHIEF OF ONCOLOGY AT THE CLINIC.

WE JUST WORK THERE A FEW HOURS A WEEK, TAKING CARE OF VETERANS WITH CANCER AND BLOOD PROBLEMS.

Q. WAS THERE ALSO A TIME WHERE YOU WERE THE CHIEF OF STAFF OF ONE OF THE HOSPITALS?

A. YES.

Q. OKAY. NOW, HOW DOES THE CHIEF OF STAFF DIFFER FROM THE CHIEF OF A PARTICULAR DEPARTMENT, LIKE ONCOLOGY?

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A. THE CHIEF OF STAFF IS AN ELECTED POSITION.

Q. ELECTED BY WHOM?

A. BY YOUR PEERS, BY OTHER PHYSICIANS.

Q. AND WHAT DOES THE CHIEF OF STAFF THEN DO IN TERMS OF THE RELATIONSHIP OF THE DOCTORS WITH THE HOSPITAL?

A. THE CHIEF OF STAFF IS RESPONSIBLE TO MAKE SURE THAT DOCTORS ARE DOING APPROPRIATE THINGS. THE CHIEF OF STAFF RUNS A MONTHLY MEETING TO GO OVER VARIOUS PROBLEMS THE PHYSICIANS ENCOUNTER IN THE HOSPITAL, AND COMPLAINTS AGAINST DOCTORS, ESTABLISHES CERTAIN POLICIES FOR PHYSICIANS WITHIN A PARTICULAR HOSPITAL.

Q. THERE WAS ALSO A TIME WHERE YOU WERE INVOLVED WITH TEACHING; IS THAT CORRECT?

A. CORRECT.

Q. WHERE WAS THAT?

A. UNIVERSITY OF MIAMI.

Q. AND THAT WAS FOR APPROXIMATELY HOW LONG?

A. ABOUT 10 YEARS.

Q. I'M NOT GOING TO TAKE THE TIME TO GO THROUGH THE VARIOUS PROFESSIONAL SOCIETIES OF WHICH YOU ARE A MEMBER, BUT I WILL ASK YOU: WAS THERE A SOCIETY ON WHICH YOU SAT AS A MEMBER OF THE BOARD OF DIRECTORS?

A. THE FLORIDA SOCIETY OF ONCOLOGY, CLINICAL ONCOLOGY.

Q. AND WHAT DID THAT INVOLVE?

A. IT JUST MEANS THAT I ATTENDED A MEETING ABOUT FOUR TIMES A YEAR TO GO OVER POLICIES, POLICIES RELATED TO CANCER MANAGEMENT PROTECTION WITHIN THE STATE OF FLORIDA.

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Q. NOW, A LOT OF YOUR PRACTICE INVOLVES TREATMENT OF PATIENTS WHO HAVE CANCER; CORRECT?

A. CORRECT.

Q. WE'VE HEARD THAT DESCRIBED SOMEWHAT, CANCER.

BUT CAN YOU DESCRIBE REALLY WHAT WE'RE TALKING ABOUT WHEN WE TALK ABOUT CANCER?

A. WELL, IN RELATIVELY SIMPLE TERMS, ONE COULD CONSIDER CANCER TO BE A SITUATION WHERE THERE ARE CERTAIN

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CELLS WITHIN THE BODY OR WITHIN A PARTICULAR ORGAN THAT BEGIN TO GROW, AND GENERALLY WHEN THIS HAPPENS TO US ON A DAY-TO-DAY BASIS, THE BODY HAS WAYS OF CONTROLLING THIS, OF GETTING RID OF THESE BAD CELLS.

BUT WHEN THE BODY IS UNABLE TO CONTROL THESE CELLS, THESE CELLS GROW WITHOUT ANY WAY OF STOPPING THEM AND BEGIN TO CAUSE PROBLEMS. AND THAT, IN ESSENCE, IS THE WAY CANCER SHOULD BE APPROACHED AND LOOKED AT.

Q. NOW, DOES CANCER GROW IN DIFFERENT PARTS OF THE BODY?

A. YES.

Q. ARE THERE DIFFERENT TYPES OF CANCERS?

A. MANY DIFFERENT TYPES.

Q. AND HAVE YOU BEEN INVOLVED WITH MOST TYPES AND IN MOST PARTS OF THE BODY?

A. YES. OUR PRACTICE IS THAT OF A GENERAL ONCOLOGY PRACTICE, AND WE TAKE CARE OF ALL TYPES OF PATIENTS WITH CANCER.

Q. IS IT SOMETIMES IMPORTANT TO TRY TO DETERMINE THE TYPE OF CANCER CELL, THE SPECIFIC TYPE?

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A. YES.

Q. IS IT SOMETIMES IMPORTANT TO DETERMINE THE ORIGINAL SITE OF ORIGIN OF THE CANCER, WHERE IT BEGAN?

A. YES.

Q. ARE THERE AN OCCASIONS, HOWEVER, WHERE YOU CAN TREAT APPROPRIATELY WITHOUT EVER DETERMINING THE SITE OF CANCER?

A. YES.

Q. INCIDENTALLY, YOU HAVE LOOKED AT THE TREATMENT IN THIS CASE, HAVE YOU NOT?

A. YES, I HAVE.

Q. AND THAT WAS BY DR. MENA?

A. YES.

Q. AND YOU ARE COMPLIMENTARY OF HIS TREATMENT, ARE YOU NOT?

A. HE DID AN EXCELLENT JOB. I WOULD BE HAPPY TO HAVE HIM AS MY DOCTOR. HE'S VERY GOOD.

Q. YOU ARE NOT HERE IN ANY WAY TO CRITICIZE THE TREATMENT THAT WAS RENDERED TO MS. HENLEY?

A. CORRECT. NOT AT ALL.

Q. SO WHEN YOU WIND UP HAVING A PATIENT WITH A CANCER AND THEY COME TO YOU, DO YOU PRIMARILY THEN TREAT THEM BY CHEMOTHERAPY OR RADIATION OR WHAT?

A. WELL, MOST OF THE TIMES THE PATIENTS THAT COME TO US HAVE ALREADY BEEN DIAGNOSED. THEY COME TO US TO MAKE RECOMMENDATIONS REGARDING TREATMENT.

IF WE FEEL THAT RADIATION THERAPY IS THEIR PRIMARY TREATMENT OR THE MOST IMPORTANT PART OF THEIR

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TREATMENT, THEN WE'LL SEND THEM FOR RADIATION THERAPY.

(THE COURT REPORTER REQUESTED A REPEAT).

MR. BARRON: Q. YOU ARE NOT THE ONLY ONE WHO HAS DONE THIS. SOME PEOPLE TEND TO TALK FASTER THAN EVEN THE BEST COURT REPORTERS CAN TAKE DOWN. THAT HAS BEEN TRUE OF MANY DOCTORS. WE'LL HAVE TO SLOW YOU DOWN A COUPLE OF TIMES.

THE COURT: AND THE OTHER THING YOU HAVE TO KEEP IN MIND IS THAT THE REPORTER CAN'T TAKE IT DOWN IF YOU ARE BOTH TALKING AT THE SAME TIME. SO YOU HAVE TO EACH WAIT UNTIL THE OTHER FINISHES.

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THE WITNESS: SURE. SHALL I CONCLUDE THAT ANSWER?
THE COURT: YES.
THE WITNESS: AGAIN, WE DON'T HAVE THE RADIATION THERAPY EQUIPMENT IN OUR OFFICE. SO WHEN A PATIENT NEEDS RADIATION THERAPY, WE'LL REFER THEM TO RADIATION THERAPY, IF WE FEEL THAT IS THE MOST IMPORTANT ASPECT OF THEIR TREATMENT.
ON THE OTHER HAND, MOST OF THE PATIENTS THAT WE SEE DO REQUIRE CHEMOTHERAPY. AND CHEMOTHERAPY IS, AS YOU KNOW, MEDICATION TO TREAT CANCER, AND THAT'S PRIMARILY WHAT WE DO IN OUR OFFICE PRACTICE.
MR. BARRON: Q. WHAT ARE THE COMMON TYPES OF CANCERS THAT YOU AND YOUR FELLOWS SEE IN YOUR OFFICE? CAN YOU GIVE US SOME EXAMPLES OF THE MOST COMMON OR MORE COMMON CANCERS?
A. CERTAINLY. WE SEE THE WHOLE GAMUT OF CANCERS,

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BUT AGAIN, WE SEE THEM IN THE ORDER OF FREQUENCY IN WHICH THE CANCERS ARE REPORTED.
FOR EXAMPLE, THE MOST COMMON CANCERS WOULD INCLUDE LUNG CANCER, COLON CANCER, BREAST CANCER, PROSTATE CANCER AND LYMPHOMAS. THESE TOP FIVE CANCERS WOULD PROBABLY MAKE UP 80 TO 90 PERCENT OF THE PATIENTS WE SEE IN OUR PRACTICE.
Q. IN ORDER TO GET AN IDEA OF HOW BUSY YOUR PRACTICE IS OR HOW EXTENSIVE YOUR EXPERIENCE HAS BEEN, CAN YOU GIVE US AN IDEA OF -- LET'S SEE, HOW WOULD WE DO THIS? -- LIKE HOW MANY NEW PATIENTS WOULD YOU SEE IN A YEAR, APPROXIMATELY?
A. I WOULD SAY APPROXIMATELY TWO NEW PATIENTS A DAY, AND IN THE COURSE OF A YEAR, LET'S SAY 10 A WEEK. PROBABLY ABOUT 500 NEW PATIENTS A YEAR.
Q. DO YOU SEE PATIENTS WHO HAVE CANCER OF THE LUNG?
A. YES, I DO.
Q. DID YOU SEE PATIENTS WHO HAVE SMALL CELL CANCER OF THE LUNG?
A. YES.
Q. DO YOU SEE PATIENTS WHO ARE SMOKERS?
A. YES.
Q. DO YOU SEE PATIENTS WHO ARE NONSMOKERS?
A. YES.
Q. DO YOU HAVE ANY IDEA AS TO WHAT PERCENTAGE OF YOUR CANCER PATIENTS ARE SMOKERS AND WHAT PERCENTAGE ARE NONSMOKERS?
A. YOU'RE TALKING ABOUT ALL CANCERS?

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Q. YES.
A. PROBABLY -- IT WOULD DEPEND ON MANY THINGS. WE DO TAKE A SURVEY OF THE PATIENTS, ASK THEM IF THEY SMOKE. WHEN THEY COME IN, THERE'S A QUESTIONNAIRE.
BUT EXACTLY WHAT THE PERCENTAGE OF SMOKERS IS, I DON'T REALLY HAVE THAT ANSWER RIGHT NOW. BUT I WOULD PROBABLY SAY 30, 40 PERCENT OF THE SMOKERS, IF WE'RE TALKING ABOUT ALL CANCERS.
Q. AND FOR THOSE WHO HAVE LUNG CANCER, DO YOU HAVE PATIENTS WHO HAVE NOT BEEN SMOKERS?
A. YES.
Q. WHAT I'D LIKE TO DO IS TO TURN YOUR ATTENTION TO MS. HENLEY AND HER CASE, IF I COULD.
FIRST OF ALL, WAS THERE A TIME THIS YEAR WHERE

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YOU WERE ASKED TO GET INVOLVED AND TO TAKE A LOOK AT THIS AS A CONSULTANT?

A. YES, I WAS.

Q. AND WERE YOU CONTACTED BY SOMEONE FROM THE FIRM OF WHICH I'M ASSOCIATED?

A. YES.

Q. WITH WHOM I'M ASSOCIATED, I SHOULD SAY.

AND YOU'VE NEVER TESTIFIED IN COURT, YOU MENTIONED, BUT HAVE YOU BEEN CONTACTED BEFORE FOR REASONS OF HAVING SOMEONE TRYING TO GET A CONSULTING OPINION FROM YOU, OR EVEN AN OPINION THAT YOU WOULD GIVE IN A DEPOSITION, FOR EXAMPLE?

A. YES.

Q. HAVE YOU DONE THAT IN SETTINGS THAT ARE NOT

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RELATED TO A CASE IN WHICH A TOBACCO COMPANY IS BEING SUED?

A. YES.

Q. CAN YOU GIVE US YOUR EXPERIENCE IN THAT REGARD.

A. TWO CASES THAT COME TO MIND. ONE WOULD BE A CASE WHERE A HOSPITAL WAS BEING SUED BY A PATIENT OR A PATIENT'S FAMILY FOR ALLEGEDLY DELAYING A DIAGNOSIS.

AND ANOTHER CASE THAT I DID REVIEW WAS A MALPRACTICE CASE FOR A PHYSICIAN WHO ALSO WAS ALLEGED TO HAVE RENDERED A DIAGNOSIS THAT WASN'T CORRECT.

Q. AND HAVE YOU BEEN CONTACTED BY THE LAWYERS I JUST MENTIONED IN THIS FIRM ON OCCASIONS OTHER THAN MS. HENLEY'S CASE THAT RELATES TO A CHARGE OR A SUIT AGAINST A TOBACCO COMPANY?

A. YES.

Q. HOW MUCH OF THIS KIND OF WORK DO YOU DO?

I MEAN, WHAT KIND OF PERCENTAGE OF YOUR PRACTICE IS INVOLVED IN THIS AS OPPOSED TO WHAT YOU MENTIONED EARLIER, TREATING PATIENTS?

A. A VERY MINOR PORTION OF MY TIME IS SPENT DOING THIS. PROBABLY LESS THAN 5 PERCENT.

Q. CAN YOU TELL ME, FOR EXAMPLE, THE TOTAL NUMBER OF TIMES YOU'VE BEEN INVOLVED IN CASES OF ALL TYPES, WHERE THEY COME TO YOU AS A CONSULTANT OR ASKED YOU TO MAYBE POTENTIALLY BE A WITNESS IN A DEPOSITION?

A. MAYBE HALF A DOZEN.

Q. IN ORDER TO CONSULT IN THIS CASE, WERE YOU PROVIDED SOME MATERIAL TO LOOK AT AND REVIEW?

A. YES.

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Q. DID YOU BELIEVE THAT YOU HAD ADEQUATE MATERIAL RELATING TO MS. HENLEY'S CASE?

A. YES.

Q. DID THAT INCLUDE RECORDS?

A. YES.

Q. DID IT INCLUDE CT SCANS?

A. YES.

Q. THE X-RAYS?

A. YES.

Q. WHAT I'D LIKE TO DO IS GO THROUGH JUST PERHAPS SOME OF THE BENCHMARKS IN THE CASE WITH YOU CHRONOLOGICALLY.

AND SO TO START OFF BY ASKING YOU: WHAT IS YOUR UNDERSTANDING ABOUT MS. HENLEY IN TERMS OF WHEN SHE WENT TO A DOCTOR WITH A PROBLEM THAT ULTIMATELY LED TO HER DIAGNOSIS?

A. THE PATIENT, FROM WHAT I UNDERSTAND, PRESENTED WITH A COUGH, AND ULTIMATELY HAD A CHEST X-RAY TAKEN. IT

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WAS EITHER DECEMBER '98 OR JANUARY. AND THERE WAS SOME ABNORMALITY ON HER CHEST X-RAY THAT WAS IDENTIFIED.

SHE SUBSEQUENTLY WENT FOR WHAT'S CALLED A CT SCAN OR CAT SCAN, WHICH SHOWS THE CHEST IN THREE DIMENSIONS AND --

Q. WE HAD THAT DESCRIBED.

A. OKAY.

Q. I DON'T MEAN TO INTERRUPT YOU, BUT THE COURT HAS ASKED THAT WE NOT REDESCRIBE THINGS, AND I THINK IT'S A GOOD REQUEST.

SHE WENT FOR A CT. AND WHAT WAS IMPORTANT ABOUT

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THAT, FROM YOUR POINT OF VIEW?

A. AN ABNORMALITY WAS SEEN IN THE MEDIASTINUM AND HILAR REGIONS, FROM WHAT I COULD TELL. THERE WAS NO LESION SEEN WITHIN THE LUNG, BUT THIS LED TO FURTHER EVALUATION.

Q. WE'VE HEARD SOMETHING ABOUT BLOOD BEING COUGHED UP, HEMOPTYSIS.

DID YOU SEE SOME INDICATIONS OF THAT BEING RAISED AS A SYMPTOM IN THE RECORDS?

A. YES.

Q. WAS IT CONSISTENTLY DESCRIBED IN THE RECORDS?

A. NO, IT WASN'T CONSISTENTLY DESCRIBED.

AT TIMES, IT WAS SAID THERE WASN'T HEMOPTYSIS OR COUGHING UP OF BLOOD. OTHER TIMES, THEY SAID THERE WAS BLOOD BEING COUGHED UP.

Q. AS A CANCER SPECIALIST, DOES A PATIENT'S COUGHING UP BLOOD, IF IT TAKES PLACE, MEAN TO YOU THAT THE PATIENT HAS A CANCER OF THE LUNG?

A. I THINK ONE HAS TO EXCLUDE THAT POSSIBILITY. COUGHING UP BLOOD CAN BE DUE TO MANY THINGS, ONE OF WHICH IS CANCER OF THE LUNG.

Q. SO YOU CONSIDER IT?

A. CERTAINLY.

Q. BUT IT DOESN'T NECESSARILY ALLOW YOU TO CONCLUDE JUST FROM THAT THAT THE PERSON HAS A LUNG CANCER?

A. CORRECT. BECAUSE MOST OF THE TIME, HEMOPTYSIS OR COUGHING UP BLOOD IS NOT DUE TO CANCER. THERE IS OTHER REASONS.

Q. WOULD YOU EXPLAIN THOSE OTHER REASONS TO US.

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A. ANY SITUATION IN WHICH ONE CAN IMAGINE BLOOD GETTING INTO THE THROAT OR EVEN INTO THE LUNG. FOR EXAMPLE, IF ONE HAS A PROBLEM WITH THEIR SINUSES, A SEVERE INFECTION WHICH CAN CAUSE BLEEDING, BLOOD CAN ULTIMATELY DRIP THROUGH THE BACK, INTO THE THROAT AND MAKE THE INDIVIDUAL COUGH IT UP. OR BLEEDING FROM THE ORAL CAVITY FROM TEETH, ONE CAN COUGH THAT UP.

A PROBLEM WITH NOSE BLEEDING, SOMETIMES IT GOES BACKWARDS.

A PROBLEM WITH, YOU KNOW, CANCERS IN OTHER AREAS, FOR EXAMPLE, CANCERS OF THE LARYNX OR CANCER OF THE THROAT CAN AT TIMES CAUSE BLEEDING, COUGHING UP BLOOD.

THERE ARE MANY REASONS WHY PEOPLE CAN HAVE HEMOPTYSIS.

Q. NOW, IF THERE IS AN ABNORMALITY, A TUMOR, A CANCER, A LESION IN THE BRONCHUS -- AND THE JURY'S HEARD WHAT THAT IS -- OR WITHIN THE LUNG, AND IT'S CAUSING A PROBLEM SIGNIFICANT ENOUGH THAT THERE IS A LOT OF HEMOPTYSIS, DO YOU HAVE ANY OPINION AS TO WHETHER THAT IS LIKELY TO BE ABLE TO BE SEEN, THE PROBLEM, BY BRONCHOSCOPE,

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IF IT'S DONE?
A. GENERALLY, IF THE HEMOPTYSIS IS DUE TO CANCER THAT ARISES WITHIN THE LUNGS, ONE ALMOST ALWAYS SEES IT WITHIN THE LUNG.
Q. YOU MENTIONED THE BRONCHOSCOPE, RADIOLOGY STUDIES THAT WERE DONE, THE CHEST X-RAY AND THE CT.
AND YOU ACTUALLY LOOKED AT THOSE YOURSELF?
A. YES, I DID.

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Q. AND THAT'S SOMETHING THAT YOU DO IN YOUR PRACTICE?
A. MOST OF THE TIME, I TEND TO LOOK AT THE PATIENT'S X-RAYS, YES.
Q. DID YOU SEE ANYTHING THERE THAT INDICATED THAT THERE WAS A CANCER OR A TUMOR OR A MASS OR A DISCRETE NODE OR ANYTHING ELSE WITHIN THE LUNG?
A. WITHIN THE LUNG ITSELF, NO. BUT IN THE CHEST, THERE WAS AN ABNORMALITY.
Q. DID THAT ABNORMALITY IN THE CHEST LOOK LIKE IT WAS EITHER WITHIN THE BRONCHUS OR, BECAUSE OF A CANCER, COMING OUT OF THE BRONCHUS?
A. NO, IT DIDN'T.
Q. WHY NOT?
A. BECAUSE OF LOCATION. IT WAS IN THE WRONG LOCATION FOR A LESION TO BE IN THE BRONCHUS.
Q. CAN YOU EXPLAIN WHAT YOU MEAN BY THAT, FROM YOUR POINT OF VIEW?
A. WELL, GENERALLY, A TUMOR THAT ONE WOULD SEE ARISE WITHIN THE BRONCHUS WOULD BE PRETTY MUCH WELL-DEFINED ON ONE SIDE OF THE CHEST OR THE OTHER. YOU CAN SEE IT VERY CLEARLY.
AND THIS X-RAY, IF ONE PUTS UP THE LATERAL VIEW OR THE SIDE VIEW, ONE CAN SEE THAT THIS TUMOR ARISES IN FRONT OF THE LUNG. IT'S ANATOMICALLY AWAY FROM THE LUNG AND NOT WITHIN THE LUNG ITSELF.
Q. DID YOU SEE ANY INDICATION IN THE X-RAY FILMS, EITHER THE PLAIN FILMS OR, MORE IMPORTANTLY, THE CT FILMS,

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THAT INDICATED THAT THERE WAS ANY MULTIPLE LYMPH NODE INVOLVEMENT?
A. NO, I DIDN'T. THIS WAS ONE CONTIGUOUS MASS.
Q. AS A CANCER SPECIALIST, DOES THAT HAVE ANY SIGNIFICANCE TO YOU IN TRYING TO DETERMINE THE SITE OF ORIGIN OR THE TYPE OF CANCER INVOLVED?
A. YES, IT CERTAINLY DOES.
Q. WHY?
A. BECAUSE IF ONE SEES ONE MASS ARISING IN THE MEDIASTINUM, ONE GENERALLY WOULD -- OR I WOULD FEEL THAT THE PRIMARY TUMOR BEGINNING IN THE MEDIASTINUM WOULD BE MORE LIKELY THAN A TUMOR THAT HAD SPREAD TO THE MEDIASTINUM FROM OTHER SOURCES.
Q. NOW, WHAT IS YOUR UNDERSTANDING ABOUT WHAT HAPPENED IN THE WAY OF FOLLOW-UP, TRYING TO DIAGNOSE OR TREAT MS. HENLEY FOLLOWING THE CT'S THAT WERE DONE? I THINK WE HAVE THE DATE OF JANUARY 3RD, '98. WHAT HAPPENED NEXT IN TERMS OF TRYING TO FURTHER DIAGNOSE OR TREAT HER SITUATION?
A. SHE ULTIMATELY WAS ADMITTED TO A TEACHING HOSPITAL AT LOS ANGELES COUNTY, I BELIEVE, OR USC, ONE OF THEIR AFFILIATED HOSPITALS, AND THEN UNDERWENT A BRONCHOSCOPIC PROCEDURE.
THE SURGEON -- ACTUALLY, TWO SURGEONS LOOKED DOWN

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THE MAJOR AIRWAYS AND REALLY DIDN'T SEE ANY CANCER ARISING WITHIN THE MAJOR AIRWAYS. THEY THEN WENT AND DID WHAT'S CALLED A MEDIASTINOSCOPY.

Q. CAN I INTERRUPT YOU FOR A MINUTE.
YOU MENTIONED TWO SURGEONS LOOKING DOWN THERE IN

A TEACHING HOSPITAL SETTING.
IF IN FACT YOU HAVE TWO SURGEONS LOOKING AT IT AND ONE IS TRYING TO TEACH ANOTHER, DOES THAT PLAY ANY PART, IN YOUR OPINION, AS TO HOW LIKELY IT WOULD BE THAT THEY FIND AN ABNORMALITY, IF THERE WAS ONE TO FIND?

A. I THINK THEY WOULD PROBABLY DO IT MORE METICULOUSLY IF ONE WOULD BE IN A GENERAL HOSPITAL THAN IN A COMMUNITY HOSPITAL SETTING.

Q. I INTERRUPTED YOU.
YOU SAID FOLLOWING THE BRONCHOSCOPY, THEY WENT TO THE CHEST AND DID A MEDIASTINOTOMY?

A. ACTUALLY, THEY DID A MEDIASTINOSCOPY.

Q. WE HEARD IT CALLED -- THEY CALLED IT THAT IN THE RECORD. THEY DEFINED IT AS A MEDIASTINOTOMY HERE IN COURT AND EXPLAINED THE DIFFERENCE.
IN ANY EVENT, THEY ENTERED THE CHEST?

A. IN MY OPINION, WHENEVER YOU PUT AN INSTRUMENT IN TO LOOK, THAT MAKES IT A SCOPY.
FROM READING THE RECORDS, I THINK THEY DID THAT. THEY LOOKED INSIDE.

Q. THEY DID DO THAT. I'M SORRY. I CONFUSED YOU. THEY DEFINED IT HERE IN COURT, THE ONE WHO DID IT, AS TO WHERE THEY MADE THE INCISION.
BUT THEY DO USE AN INSTRUMENT TO LOOK IN. YOU ARE CORRECT.

A. THEY DID IT IN A DIFFERENT AREA THAN WHERE THEY USUALLY DO IT. BUT YES, THEY DID LOOK INSIDE, AND THEY TOOK A BIOPSY OF THIS MASS.

Q. AND WHAT HAPPENED THEN, AND WHAT SIGNIFICANCE WAS IT TO YOU?

A. THEY TOOK A BIOPSY. THE BIOPSY WAS INTERPRETED BY THE PATHOLOGIST AS REVEALING A SMALL CELL CARCINOMA.

Q. WAS THERE ANY INDICATION IN THE PATHOLOGY REPORT THAT THE PATHOLOGIST COULD IDENTIFY ANY TISSUE THAT LOOKED LIKE EITHER LUNG TISSUE OR BRONCHIAL TISSUE?

A. NO, THERE WASN'T.
AS A MATTER OF FACT, THE REPORT FROM THE PATHOLOGIST INDICATED SMALL CELL CARCINOMA, NOT REALLY DEFINING ANY SITE OR ORIGIN.

Q. AND SO FAR, EVERYONE HERE HAS AGREED IT IS REALLY THE CELL TYPE, A SMALL CELL.
DO YOU AGREE OR HAVE ANY REASON TO DISAGREE WITH THAT?

A. NO, I DON'T.

Q. BY THE WAY, FOLLOWING THOSE PROCEDURES, THERE WAS MENTION OF THE FACT THAT I THINK ON FEBRUARY 21 THERE WAS A VISIT TO THE ER BY MS. HENLEY.
DID YOU LOOK AT THAT RECORD?

A. THAT'S THE ONE WHERE SHE HAD THE HEMOPTYSIS?

Q. YES.

A. YES, I DID.

Q. AND ONE PERSON COMMENTED ABOUT THAT.
WHAT SIGNIFICANCE, IF ANY, DO YOU FIND FROM THAT IN HER CASE?

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A. THE PERSON IN THE HISTORY SAID THAT SHE HAD A CANCER OF THE LUNG?

Q. NO. NO. I CONFUSED YOU.
A. YES. SORRY.
Q. LET ME PUT IT THIS WAY: WHAT COULDFOR THEM TO PRESENT WITH SYMPTOMS OF COUGHING UP OF BLOOD, WEIGHT LOSS AND FATIGUE?
A. THEY CAN PRESENT IN THAT MANNER, BUT IT'S NOT REALLY A SPECIFIC FINDING FOR LUNG CANCER. IT COULD BE ANY KIND OF CANCER.
Q. IS IT FAIR TO SAY, DOCTOR, THAT IN ORDER FOR THERE TO BE AN EXPLANATION ABOUT MS. HENLEY'S COUGHING UP OF BLOOD, ONE NEEDS TO CONCLUDE EITHER THAT SHE HAS A LUNG CANCER OR HAVE SOME SECONDARY EXPLANATION FOR THAT COUGHING UP OF BLOOD?
A. I WOULD AGREE WITH THE SECONDARY EXPLANATION.
Q. OKAY. AND THE SECONDARY EXPLANATION -- I THINK ONE OF THE EXPLANATIONS YOU GAVE WAS THAT THE BRONCHOSCOPY MAY HAVE CAUSED HER TO COUGH UP BLOOD?
A. WELL, THAT WAS IN THE SECOND EPISODE, WHEN SHE CAME TO THE EMERGENCY ROOM. BUT THERE WAS SOME MENTION THAT SHE MIGHT HAVE HAD HEMOPTYSIS BEFORE THAT.
AND IN THAT SITUATION, IF SHE TRULY HAD HEMOPTYSIS, I WOULD BE VERY -- I AM VERY SURPRISED THAT THEY

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DIDN'T FIND A LESION IN THE MAJOR BRONCHI. THAT'S WHERE YOU EXPECT TO SEE IT.
Q. NOW, DOCTOR, IS IT TRUE THAT A SMALL OR OCCULT LUNG PRIMARY IN THE PRESENCE OF BULKY MEDIASTINAL DISEASE CAN BE A LUNG CANCER?
A. I HAVE TO ELABORATE ON THAT, IF I MAY.
Q. YOU CAN'T ANSWER YES OR NO FIRST, AND THEN ELABORATE?
A. THE ANSWER IS YES, BUT -- BUT NOT -- IT NEEDS FURTHER DEFINITION.
THE COURT: YOU CAN GIVE A FAIR AND COMPLETE ANSWER TO THE QUESTION.
MS. CHABER: YES. I'M NOT CUTTING HIM OFF. I JUST WANTED A "YES, BUT" OR A "NO, BUT," BUT THAT'S FINE.
THE COURT: YOU CAN GIVE YOUR ANSWER, AND THEN EXPLAIN IT. THAT'S FINE.
THE WITNESS: AS I PREVIOUSLY STATED, ONE WOULD HAVE TO -- WHEN LUNG CANCER METASTASIZES TO THE MEDIASTINUM, THE PATTERN THAT IS ALMOST ALWAYS SEEN IS MULTIPLE DISCRETE LYMPH NODES, AND THEY CAN GET RATHER BULKY, BUT YOU CAN IDENTIFY SEPARATE LYMPH NODES.
WHEN YOU'RE DEALING WITH A SOLID CONTIGUOUS MASS, THIS WOULD BE ALMOST UNHEARD OF WITH A PATIENT WITH LUNG CANCER, BE IT SMALL CELL OR OTHER TYPES.
WHAT I'M SAYING IS, IN MY EXPERIENCE -- AND I'VE SEEN LOTS OF SMALL CELL CANCERS -- I'VE NEVER SEEN A PATIENT PRESENT IN THAT MANNER WHERE THEY ONLY HAVE A LARGE MASS IN THE MEDIASTINUM, WITHOUT EVIDENCE OF ANY PRIMARY DISEASE

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WITHIN THE LUNG ITSELF.
MS. CHABER: Q. WELL, DOCTOR, YOU UNDERSTAND THAT THERE MAY HAVE BEEN ADDITIONAL WAYS OF GETTING THAT EVIDENCE, BUT THE DOCTORS WHO WERE OPERATING ON HER FELT IT WAS MORE IMPORTANT TO STAGE THE CANCER AND GET THE CELL

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TYPE?
A. I'M NOT SURE I KNOW WHAT OTHER WAYS THEY COULD HAVE GOTTEN THE DIAGNOSIS.
Q. WELL, COULDN'T THEY HAVE DONE MULTIPLE WASHINGS AND BRUSHINGS OR TAKEN A, YOU KNOW, RANDOM NEEDLE OR PINCH OF THE BRONCHIAL TUBE WHILE THEY WERE THERE?
A. THEY COULD HAVE DONE THAT. BUT IN MY OPINION, IF YOU DON'T SEE ANY SUSPICIOUS LESION IN THE BRONCHUS, ESPECIALLY IN SMALL CELL CANCER, YOU ARE NOT GOING TO FIND ANYTHING.
Q. NOW, THEY DID SEE MILD INFLAMMATION AND DR. HAGEN DID TESTIFY ABOUT THAT?
A. YES, I READ THAT.
Q. AND WAS IT YOUR UNDERSTANDING THAT DR. HAGEN MADE THE DETERMINATION THAT SINCE IT WOULD BE EASIER TO GET A BIOPSY OF THE TUMOR BY GOING IN A DIFFERENT METHOD, THAT THAT WAS PREFERABLE TO WAITING AROUND FOR THE CYTOLOGY TO COME BACK AND SO FORTH?
MR. BARRON: OBJECTION, YOUR HONOR. VAGUE AND AMBIGUOUS.
THE COURT: DO YOU UNDERSTAND THE QUESTION?
THE WITNESS: NOT REALLY.
MR. BARRON: ALSO, ARGUMENTATIVE AS PHRASED.

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THE COURT: HE DOESN'T UNDERSTAND IT.
MS. CHABER: IF HE DOESN'T UNDERSTAND IT, IT MAKES IT VERY EASY.
THE COURT: YES.
MS. CHABER: Q. DOCTOR, YOU ARE NOT THE PERSON TREATING MS. HENLEY; CORRECT?
A. NO, I'M NOT.
Q. YOU'RE NOT THE PERSON WHO DID THE SURGERY ON MS. HENLEY; CORRECT?
A. CORRECT.
THE COURT: I'M JUST TRYING TO SCHEDULE THE RECESS.
CAN WE FINISH WITH DR. RYMER IF WE PUSH ON?
MS. CHABER: I'M GOING TO BE DONE IN TWO OR THREE MINUTES.
THE COURT: WHY DON'T WE FINISH WITH DR. RYMER, AND THEN WE'LL TAKE OUR MORNING RECESS.
MS. CHABER: Q. LET ME JUST ASK YOU ONE VERY SHORT QUESTION. MS. HENLEY -- STRIKE THAT.
DID YOU ANALYZE MS. HENLEY'S CASE TO DETERMINE WHAT HER SMOKING HISTORY WAS?
A. I CAME ACROSS REFERENCES TO HER SMOKING HISTORY. THAT WASN'T PARTICULARLY THE REASON WHY I ANALYZED IT, BUT THE DOCTORS DID MENTION IT IN HER CHART.
Q. AND SHE HAD A CIGARETTE SMOKING HISTORY?
A. I THINK SHE SMOKED A LOT.
Q. OKAY. AND WITH RESPECT TO LUNG CANCERS OF THE SMALL CELL TYPE, I THINK YOU INDICATED THAT THE MAJORITY OR

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THE VAST MAJORITY OF YOUR PATIENTS WHO HAD SMALL CELL LUNG CANCER SMOKED; CORRECT?
A. YES, THAT'S TRUE.
Q. HAVE YOU TOLD ANY OF THOSE PATIENTS THAT THEIR CIGARETTE SMOKING WAS THE CAUSE OF THEIR LUNG CANCER?
A. NO.
MR. BARRON: OBJECTION, YOUR HONOR. RELEVANCE.
MS. CHABER: I'M DONE.

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MR. BARRON: IT DOESN'T MATTER. THE ANSWER IS OUT. TO ME, IT WASN'T RELEVANT, BUT IT'S OKAY.
THE COURT: YOU WITHDRAW THE OBJECTION?
MR. BARRON: THAT'S FINE. SURE.
THE COURT: OKAY.
MS. CHABER: I'M DONE.
SEE, I MADE THAT EASY, JUDGE.
THE COURT: OKAY. MR. BARRON.

REDIRECT EXAMINATION

BY MR. BARRON: Q. JUST ONE AREA, DOCTOR.
YOU WERE ASKED TO COMMENT WHETHER YOU AGREED OR DISAGREED WITH A QUOTE THAT MS. CHABER TOOK OUT OF AN ARTICLE BY SUSTER ABOUT MASSIVELY ARISING IN THE CHEST.
THAT'S NOT THE EXACT QUOTE, BUT DO YOU KNOW WHAT I'M TALKING ABOUT?
A. YES.
Q. THEN YOU SAID THAT YOU WOULD WANT TO QUALIFY THAT, AND THEN I DON'T THINK YOU HAD THE CHANCE TO QUALIFY IT.

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A. I THINK I DID MENTION IT. I SAID THAT, GENERALLY, IF ONE HAS LUNG CANCER THAT SPREADS TO THE CHEST CAVITY, YOU SEE A NUMBER OF DISCRETE LYMPH GLANDS AS OPPOSED TO ONE SOLID MASS.
Q. THEN YOU DID QUALIFY IT LATER, BUT YOU DIDN'T TIE IT UP.
IS THAT THE QUALIFICATION --
A. YES.
Q. -- THAT YOU WANTED TO MAKE IN RESPONSE TO THE SUSTER ARTICLE?
A. YES.
MR. BARRON: THANK YOU, YOUR HONOR.
THE COURT: ANY FURTHER QUESTIONS FOR DR. RYMER?
MS. CHABER: NO.
THE COURT: MAY HE BE EXCUSED?
MS. CHABER: YES, HE MAY.
THE COURT: MR. BARRON, MAY HE BE EXCUSED?
MR. BARRON: OH, YES, YOUR HONOR.
THE COURT: DR. RYMER, YOU ARE EXCUSED.
THE WITNESS: THANK YOU.
(WITNESS EXCUSED)
THE COURT: OKAY. JURORS, PLEASE CONTINUE TO FOLLOW THE ADMONITION OVER THE MORNING RECESS. AND WE'LL GET BACK TOGETHER AT 10 AFTER 11:00.
(RECESS TAKEN AT 10:50 A.M.)
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